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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 604

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, ET AL., *Appellants*

v.

STATE OF MISSOURI, *Appellee*

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO AND INTRODUCTION

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO is primarily a federation of national and international unions, including the appellant union. The total membership of unions affiliated with the AFL-CIO is approximately 13 million. This brief is submitted because of the importance to all unions of the issue in this case.

That issue is the validity of a Missouri statute known as the King-Thompson Act.[1] This creates a State Board of Mediation to handle labor disputes affecting public utilities. It requires that notice of such disputes be sent the Board; confers powers of mandatory mediation on the Board; and provides for the appointment, with or without the cooperation of the employer and the union, of a "public hearing panel," which is empowered to hold a public hearing on the dispute, and to make a report, including recommendations for settlement, to the governor. (§§295.120-295.160.) (This procedure is referred to in the statute, not inaptly, as "compulsory arbitration." See §295.170.) If either side refuses to accept the recommendations, or if a strike otherwise eventuates or threatens, the governor is authorized to take possession of the facility, "for the use and operation by the state of Missouri." (§295.180.) When a facility has been taken over by the State it is unlawful to engage in a strike "as a means of enforcing any demands against the utility or against the state." (§295.200.) Both the union and the employees are subject to severe penalties for violation. (§295.200.)

The American labor movement has always opposed, and now opposes, both compulsory arbitration and anti-strike legislation, save as a last resort in time of national peril.

In our view the King-Thompson Act embodies the worst features of both anti-strike legislation and compulsory arbitration.

Its ban against striking, once the governor purports to take "possession," is absolute.

As respects compulsory arbitration, the union's only alternative to accepting the recommendations of the public

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[1] Ch. 295, Rev. Stat. Mo. 1949. The Act is set out in full in Appendix D (pp. 55a-65a) of the Jurisdictional Statement, and is analyzed in detail at pp. 12-16, *infra*.

hearing panel, or, in the present case, of the State Board of Mediation, is seizure by the governor, which means continuation of the status quo. Since the union will normally be seeking to change the status quo to the advantage of the employees, that is a Hobson's choice. Viewed pragmatically, the "recommendations" are binding on the union.

They are not binding on the employer, however, since to it continuation of the status quo as respects wages, hours, and working conditions will normally be a not merely acceptable but highly desirable alternative.

Thus the reality is to be that there is compulsory arbitration for the union and not for the employer.

However, even if we accepted the assertion of the court below that the King-Thompson Act does not provide for compulsory arbitration,[2] that would not make it more palatable to us.

A ban on strikes, unaccompanied by any procedure for resolving disputed issues over wages and working condi-

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[2] The court stated (R. 188):

"The King-Thompson Act makes no provision for arbitrators who shall hear and finally *determine* labor *disputes*, nor does the King-Thompson Act deny to utility employees the right to strike. No issue as to compulsory arbitration is presented on this record." (Emphasis in the original.)

These assertions are typical of the opinion of the Missouri Court, which is throughout concerned only with form, never with substance.

While the union is nominally free to reject the "recommendations," the result will be seizure and continuation of the status quo. The statute, unlike the court below, does not blink the use of the term "compulsory arbitration." See *e.g.*, §295.170.

Similarly, the court's assertion that the Act does not "deny to utility employees the right to strike" evidently rests on the assumption, never made explicit, that after seizure the employees are not *utility* but *state* employees.

All this is the merest sophistry.

tions, is more inequitable to employees than compulsory arbitration, distasteful though the latter may be. A naked strike ban merely legislates the continuation of the status quo. Such a law is as objectionable as compulsory arbitration from the standpoint of the coercion involved, and, unlike compulsory arbitration, it holds out no hope to the employees of achieving improvements in wages or working conditions. From the standpoint of sound industrial relations, an arbitration award at least undertakes to settle the disputed issues, while an anti-strike law merely freezes the inflamed area temporarily, doing nothing toward effecting a permanent cure.

At all events the AFL-CIO is opposed both to banning strikes and to compulsory arbitration, and we regard such laws as the King-Thompson Act as a grave threat to free collective bargaining and a free economy. We take our stand with Senator Taft, who during the Taft-Hartley debate declared (93 Cong. Rec. 3835):

> "We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, prices, and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for two years to come, I do not see how in the end we can escape a collective economy. • • • • • •
>
> "If we begin with public utilities, it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. • • • • • •
>
> "We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure,

> or to any other action. We feel that it would interfere with the whole process of collective bargaining. * * *"[3]

In its general philosophy, as well as in numerous specific provisions (as will be shown later) the King-Thompson Act conflicts utterly with Taft-Hartley.

The King-Thompson Act, and similar laws in about a dozen other states, were enacted in 1947, evidently as a reaction to a long and bitter strike in that year against the Duquesne Power Company in Pittsburgh.[4] A few other states have enacted such laws at various times,[5] the earliest being the Court of Industrial Relations Act of Kansas, which goes back to 1920.[6]

However in 1951, in *Amalgamated Ass'n, Etc.* v. *Wisconsin Employ. Rel. Bd.*, 340 U.S. 383, this Court held invalid a Wisconsin law which forbade employees of public utilities to strike, and provided for compulsory arbitration. The Wisconsin statute, this Court held, invaded a field preempted by the federal Labor Management Relations Act of 1947, and in addition, conflicted in various particulars with that federal Act.

Since that decision, the various state public utility anti-strike laws, whether utilizing seizure or compulsory arbitration, or a combination of the two, have usually been regarded as invalid, and in most states have become dead letters.[7] A more narrowly drawn Massachusetts statute,

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[3] Quoted in *Amalgamated Ass'n, Etc.* v. *Wisconsin Employ. Rel. Bd.*, 340 U.S. 383, 406, n. 4.

[4] See Rosenn, "State Intervention in Public Utility Disputes," 12 Lab. L. J. 387, 388 (1961).

[5] The statutes are listed in Rosenn, *op. cit. supra* note 4, at 388, and in Note, "State Seizure of Industries," 48 Va. L. Rev. 699 (1962).

[6] This statute was held unconstitutional in *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U.S. 522.

[7] See Sussna, "State Intervention In Public Utility Labor-Management Relations," 9 Lab. L. J. 35 (1958); Note, 27 Temple L. Q. 195, 200-202 (1953).

which did not forbid strikes but empowered a public board to conduct hearings and render a report apportioning blame and recommending terms of settlement, was held invalid as in conflict with the federal Act in *General Electric Co.* v. *Callahan*, 294 F. 2d 60 (1st Cir. 1961). However, Missouri and Virginia have continued even since the *Amalgamated* decision to enforce their public utility anti-strike laws.[8] A ruling of the Missouri Attorney General, rendered immediately after this Court's decision in *Amalgamated*, that the Missouri statute was unconstitutional, was overturned by the State Supreme Court,[9] and attempts to secure review by this Court of state decisions upholding the Virginia and Missouri statutes have been frustrated by this Court's stringent rule on mootness. *Harris* v. *Battle*, 348 U.S. 803; *Local No. 8-6, Oil, Etc., Workers Union* v. *Missouri*, 361 U.S. 363.

The AFL-CIO is concerned that if the Missouri statute is upheld in this case (as we do not see how it can be), other states will undertake enforcement of their public utility anti-strike laws, with consequent erosion of the national labor relations policy of free collective bargaining. Alternatively, if the State of Missouri succeeds in its belated attempt to moot the present case, the way will have been opened for the states to apply their own dissonant labor laws to disputes covered by the federal Act.

ARGUMENT

We submit that Chief Justice Warren and Justices Black and Brennan were correct when they declared in *Local No. 8-6, Oil, Etc., Workers Union* v. *Missouri*, 361 U.S. 363, 372 (dissenting opinion) that the King-Thompson Act is plainly invalid under this Court's decision in *Amalgamated*

[8] Rosenn, *op. cit. supra* note 4, at 395; Note, "State Seizure of Industries," 48 Va. L. Rev. 699 (1962).

[9] *Missouri* v. *Pigg*, 362 Mo. 798, 244 S.W. 2d 75 (1951).

Ass'n, Etc. v. *Wisconsin, Employ. Rel. Bd.*, 340 U.S. 383, discussed *supra* p. 5.

As we understand it, the Missouri Supreme Court undertakes to distinguish that case on the ground that under the Missouri statute the governor is authorized "to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest." (§295.180.) Section 2(2) of the Labor Management Relations Act, 1947, excludes from its definition of "employer" "any State"; and §2(3) excludes from its definition of "employee" "any individual employed by * * * any * * * person who is not an employer as herein defined."[10] The federal Act thus does not apply to disputes between a state and its employees, and the court below, though it did not discuss the issue in such mundane terms, evidently regarded the taking of "possession" by the Governor as removing the case from the reach of the federal Act and this Court's decision in *Amalgamated*. We submit that it does not.

1. The issuance of the Governor's executive orders purporting to "take possession" of the Missouri facilities of the Transit Company did not make the State the "employer," or transform the strikers into state "employees."

The Governor issued two executive orders. The first stated that "I hereby take possession of the * * * facilities" of the Transit Company "located in the State of Missouri." (R. 134-135.) The second order directed the Chairman of the State Mediation Board to take possession as the Governor's "agent." (R. 136-137.)

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[10] The Wagner Act definition of "employer" was the same in this respect, but the Wagner Act definition of "employee" did not contain the exclusion quoted above. The Taft-Hartley Conference Report describes the added language as "a clarifying provision." H. Rep. No. 510, 80th Cong., 1st Sess., p. 33.

Nothing else happened. The Company officers and directors continued to manage its business as theretofore, without interference from the Governor, the Chairman of the Mediation Board, or any other state official. The Chairman testified (R. 45):

> "So far as I know the company is operating now just as it was two weeks ago before the strike."

The altogether nominal role of the State here is emphasized by the sharply contrasting situation in *United States* v. *United Mine Workers*, 330 U.S. 258. There the Court concluded (289):

> "* * * We hold that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employee, the Norris-LaGuardia Act does not apply."

The War Labor Disputes Act, under which the mines were seized, included

> "procedures for adjusting wages and conditions of employment of the workers in such a manner as to avoid interruptions in production." (330 U.S. at 285.)

The Executive Order similarly authorized the Secretary of the Interior to negotiate with the union "for appropriate changes in terms and conditions of employment for the period of governmental operation." (330 U.S. at 286.) Pursuant to these authorizations the Secretary negotiated a collective bargaining agreement with the union which "granted substantial wage increases and contained terms relating to vacations" and grievance procedures. (330 U.S. at 286.) The mine owners were not parties to the agreement, or to any of its subsequent modifications, and neither agreement nor modifications were submitted to them for approval.

The Court held, accordingly, that the Government had (330 U.S. at 287):

> "substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the union and the operators."

Although the regulations of the Coal Mines Administrator declared that the earnings or liabilities of the mines, while under seizure, were those of the owners, and not the Government (330 U.S. at 288), the Court subsequently held that such a seizure is a taking of private property for public use, and that the United States must pay operating losses attributable to wage increases instituted during the seizure. *United States* v. *Powee Coal Co.*, 341 U.S. 114.

The contrast with the present situation is marked. The State's seizure "agent," the Chairman of the State Mediation Board, took no action whatever in consequence of the seizure, apart from handing the executive orders to the company officials. (R. 38-45.) Prior to the seizure he had, as Chairman of the State Mediation Board, attended negotiations between the union and the company at the office of the Federal Mediation and Conciliation Service (R. 50-51, 69), and later the State Board, under his chairmanship, had issued public recommendations for settlement. (R. 55.) But with the token seizure, and the injunction against the strike, the Chairman's role with regard to the company's labor relations ended. (R. 45.)

On the occasion of an earlier "seizure" of the same Transit Company, the court below said (*Rider* v. *Julian*, 365 Mo. 313, 282 S.W. 2d 484, 494-495 (1955)):

> "The possession • • • was largely declaratory in nature. It was proclaimed by the governor and again by • • • [the chairman] • • • but actually nothing was done about it. • • •

> "It is apparent from the record, and we so hold, that possession of * * * the state was not intended to be and was not in fact actual possession. Insofar as the possession needs to be identified by name, it might be called a legal possession or a nominal and technical possession. It was more or less the assertion of the right to possession which did not, in this case, ripen into exclusive or actual possession."

A New Jersey chancellor made much the same evaluation of a "seizure" under that State's law: "They did not become employees of the State in any ordinary sense, but only in the peculiar or figurative sense intended by the statute." *Van Riper* v. *Traffic Tel. Workers*, 142 N. J. Eq. 785, 792, 61 A. 2d 570, 576 (Ch. 1948), *rev'd on other grounds*, 2 N. J. 335, 66 A. 2d 616 (1949).

United Mine Workers is germane to this case only in the limited sense that it serves to contrast actual assumption and exercise by government of the genuine role of an employer with the total absence of any such role. But the United States in *United Mine Workers* adopted the role of employer pursuant to explicit authority conferred by the War Labor Disputes Act. In the face of the contrary legislative determination expressed by Congress in the Taft-Hartley Act, the United States cannot, any more than a state, intervene in a labor dispute even by taking possession of the property and assuming the genuine role of an employer during the period of seizure. This Court explicitly so held in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579. Congress has withheld from both the United States and a state the power to intervene in a labor dispute by seizure whether or not the governmental entity has in actual substance become the employer for the period of seizure. Such seizure is quite different from a situation where a state or municipality during a labor dispute resorts to condemnation of a utility and acquires title to it in order to operate it thereafter, and not solely for the period of the

dispute, as a governmental instrumentality. For in that case the state or city has decided to exercise the power it has to provide transportation services through governmental ownership rather than by private enterprise in the same way that a municipality runs a sanitation department and the United States runs the post office.[11] Only in the case of true governmental ownership does it become relevant that the National Act excludes from covered employers "any State or political subdivision thereof" (§2(2)) and from covered employees "any individual employed * * * by any * * * person who is not an employer as herein defined." (§2(3).) These exclusions should not apply, however, where government assumes even the genuine role of an employer but limits its role to a period of seizure brought about by intervention in a labor dispute. Congress did not by these statutory exclusions undo by indirection its decision that recourse to seizure as a labor relations device was incompatible with the national labor policy.

But in any event this case does not bring consideration of the statutory exclusions into play. For here the State did not become the employer for any purpose except to render the strike, it hoped, illegal. So purely formal and nominal a "taking of possession", surely cannot suspend the application of the federal Act. If it could, it would be open to any state or city or town to destroy the rights guaranteed by the federal Act by the easy device of proclaiming that it was "taking possession of" the struck utility or other plant or facility.[12]

If the doctrine were established that a state or municipality may oust the application of the federal Act merely by taking nominal possession of a plant or facility engaged in a labor dispute, the doctrine could hardly be limited to

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[11] This is what New York City did during a recent bus strike. See Note, "State Seizure of Industries," 48 Va. L. Rev. 699 (1962).

[12] *Cf.* the statement of Senator Taft, quoted *supra* p. 4.

utilities by any principle of preemption. An easy road would be opened for strike breaking by city councils subservient to employer interests, and there can, unfortunately, be little doubt that municipalities which have heretofore undertaken to ban unions entirely by such devices as licensing ordinances [13] would be equally ready to employ the device of seizure. The federal Act could become a dead letter through wide reaches of the country.

2. The seizure provisions of the King-Thompson Act are inseparable from other provisions and practices under the Act which conflict with the federal Act.

Seizure is but the ultimate step in the elaborate procedures which the King-Thompson Act creates for dealing with public utility disputes.

The statute begins (§295.010.) by reciting that the possibility of labor strife in utilities is "a threat to the welfare and health of the people"; that utilities "are clothed with public interest";[14] and that "the state's regulation of the labor relations affecting such public utilities is necessary in the public interest." [15]

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[13] See, *e.g.*, *Staub* v. *City of Baxley*, 355 U.S. 313. The union's brief in that case listed a number of such licensing ordinances. Southern municipalities continue to enact these ordinances, even in the teeth of the *Staub* decision. A usual practice is to enforce the ordinance long enough to blunt the union organizing drive, but to repeal the ordinance and drop pending prosecutions prior to appellate review. Union attempts to enjoin enforcement (*e.g.*, *Fuqua* v. *United Steelworkers*, 253 F. 2d 594 (6th Cir. 1958)), have foundered on *Douglas* v. *Jeanette*, 319 U.S. 157.

[14] This terminology is like that of the Kansas Court of Industrial Relations Act, held unconstitutional in *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U.S. 522. However, the Kansas Act declared not merely utilities but certain manufacturing and mining operations "to be affected with a public interest."

[15] Under this Court's decision in *Amalgamated Ass'n, Etc.* v. *Wisconsin Employ. Rel. Bd.*, 340 U.S. 383, it is precisely state "regulation of the labor relations" of utilities covered by the federal Act that is preempted.

A State Board of Mediation is established to administer the Act. (§295.030.)

Collective bargaining agreements between unions and utilities are required to be reduced to writing and to continue for not less than one year. Thereafter an agreement is to continue in effect from year to year, unless one or both parties informs the other in writing of the specific charges proposed, and also files a copy of such demands with the State Board of Mediation at least 60 days before termination. (§295.090.)[16]

These provisions conflict in several respects with the federal Act. Under the federal Act a collective bargaining agreement must be reduced to writing if either party so requests (§8(d)), but there is no absolute requirement that it be in writing. The federal Act contains no provisions as to minimum duration of contracts or automatic renewal. Section 8(d) of the National Labor Relations Act requires the giving of written notice of proposed termination or modification to the other party to the contract 60 days prior to termination, and of 30 days notice to the Federal Mediation and Conciliation Service and to any State mediation agency. It does not require any service of proposed written changes upon the other party, or upon any mediation agency.

The King-Thompson Act goes on to provide (§295.080.1) that upon receipt of a notice the State Mediation Board shall step into the picture. As the Chairman put it, in the present case the notices were filed "and in that manner the Act took jurisdiction of this dispute." (R. 46.) The Board may convene a conference between the parties upon the request of either party or upon its own motion, and it shall be the duty of the parties to attend "and to continue

[16] These provisions were complied with. (R. 46.)

in such conference until excused by the board." (§295.080.3.)

This last requirement is likewise probably invalid as in conflict with the federal Act. Section 8(d)(3) of the National Labor Relations Act evidently contemplates that a state mediation service may play some role in the mediation of disputes subject to the federal Act. Section 202(c) of Taft-Hartley provides for the cooperation of the Federal Mediation and Conciliation Service with state and local mediation agencies; and §203(b) directs the Federal Service to stay out of disputes having only a minor effect on interstate commerce, if state or other conciliation services are available.

However, even the Federal Service is not given any power to force mediation upon the parties, but only to make "available" or "proffer" its services. (§§201(b) and (c), §203(b).) The federal Act provides that employers and unions shall participate fully and promptly in such meetings as may be undertaken by the Federal Service (§204(a)), but has no provision for enforcement of this obligation. The King-Thompson Act, on the other hand, provides (§295.200.6) for enforcement of all of its provisions by injunction. Thus in essence the federal Act provides for voluntary mediation while the state Act provides for compulsory mediation.

The provision that the parties must continue in conference with the State Board until excused by it obviously might interfere with the functioning of the Federal Mediation Service, or with the parties' own negotiations. In the present case the union objected to the continued participation in the negotiations, and in the mediation efforts of the Federal Service, of the Chairman of the State Board, but the Chairman insisted on it. (R. 49.)

In *Missouri* v. *Pigg*, 362 Mo. 798, 244 S.W. 2d 75 (1951) the court below held that this first portion of the King-

Thompson Act (*i.e.*, §§295.010-295.080) was not in conflict with the Labor Management Relations Act of 1947 which, the court said, contemplates the existence of state boards and cooperation with them. (See R. 178-179.) However, as noted, these provisions conflict with the national Act in numerous respects.

In *Missouri* v. *Local 8-6, Oil, Etc., Workers Union*, 317 S.W. 2d 309 (Mo. 1958), *vacated as moot*, 361 U.S. 363, the court below further held that these preliminary sections are severable from and could stand independently of the remainder of the Act. (See R. 179.) However that may be, the converse does not follow. The validity of the seizure can hardly be adjudged in isolation from the steps that led up to it.

The King-Thompson Act provides that if the utility and the union do not execute a final agreement in writing disposing of the dispute before the termination date of the contract, or agree to arbitration, each shall designate a member of a public hearing panel, and these two members shall choose a third. (§295.120.) This public hearing panel is to hold public hearings and render a report (§295.120.2), containing a resume of the evidence and the panel's recommendation for settlement. (§295.150.) If either party to the dispute refuses or fails to designate a panel member, the State Board of Mediation is authorized to appoint the panel members. (§295.160.)

In the present case a variation on these statutory procedures was employed. When the negotiations reached an impasse, the Chairman of the State Board urged the union not to strike and proposed that it submit the matter to a public hearing panel. (R. 52.) Then he proposed that it be submitted to the full membership of the State Board of Mediation. (R. 52.) The union declared that it would participate only if the Board would agree that the proceed-

ings would not be public and that the Board would not make any recommendations for settlement. (R. 52-53.) The Chairman rejected these conditions (R. 52-53), and the Board then proceeded to take the matter up in camera and rendered a report and recommendations for settlement. (R. 54-55.) Apparently neither party accepted the recommendations (R. 55-56), and the executive orders taking "possession" of the facilities of the Transit Company in Missouri followed.

The King-Thompson Act provides that if either the utility or the union refuses to accept and abide by the recommendations made pursuant to the Act, so that a strike results or threatens, "or should either party * * * engage in any strike," the governor is authorized to take possession of the facility. (§295.180.)

Although seizure is the ultimate step in the processes established by the Act, *i.e.*, notices, mandatory mediation, and hearing panel with recommendations for settlement, and is triggered by rejection of the recommendations for settlement, as the Act is written the governor apparently may resort to seizure whenever a strike transpires, even though none of these preliminaries have taken place.

If there were a seizure without any preliminaries, it may be that its validity could be adjudicated without reference to the remainder of the Act.

Here, however, the preliminary procedures were utilized. The notice requirements, though they conflict with the federal Act, were complied with. The Chairman of the State Board attempted mediation, and insisted on his right to be present at negotiations even over the union's objection. Finally, again over the union's objection, the State Board of Mediation rendered a report and recommendations for settlement. It was only after these preliminary proceedings, and the rejection of the recommendations,

that seizure ensued. We submit that it cannot be judged apart from them.

A much more narrowly drawn Massachusetts statute, which did not forbid strikes, but simply empowered the State Board of Conciliation and Arbitration to mediate, to conduct hearings, and to render a report apportioning blame and recommending terms of settlement, was held invalid as in conflict with the federal Act in *General Electric Co.* v. *Callahan*, 294 F. 2d 60 (1st Cir. 1961). The court enjoined the State Board from proceeding with its hearing. In its opinion, by Chief Judge Woodbury, it declared (p. 67):

> "Mere participation in State Board hearings will surely have some tendency to solidify positions taken at the bargaining table thereby making it more difficult later to modify or abandon a stand taken on a bargaining issue in favor of an amicable settlement. Moreover, having held a hearing, the Board is not limited to editorial comment. Nor are its functions merely to mediate and conciliate. Its function after investigating a labor controversy is to render a written decision to be made public and be open to public inspection advising the parties as to what they should do to end the controversy and ascertain which of the parties is 'mainly responsible or blameworthy' for its existence. The obvious statutory purpose is to coerce agreement by invoking official action to mold public opinion with respect to a labor dispute to the end of bringing the pressure of public opinion to bear to force a settlement. This is quite contrary to the national policy not to compel agreement but instead only to encourage voluntary agreements freely arrived at after 'good faith' bargaining between the parties. The conflict between state and federal policy is obvious."

We submit that the Court of Appeals is wholly correct as to a conflict between state and federal policy.

At every turn the federal Act makes clear its policy against any government coercion with respect to the terms of settlement.

Section 8(d) of the National Labor Relations Act, which defines the duty to bargain collectively, declares: "[B]ut such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

The policy against government pressure as to the terms of settlement applies even to national emergency disputes. A board of inquiry appointed to inquire into such a dispute is to make a report of the facts, but the Act provides that the report "shall not contain any recommendations." (§206.) Again, the statute declares that it is the duty of the parties, following the issuance of the 80-day injunction, to make every effort to settle their differences with the assistance of the Federal Mediation and Conciliation Service. But the statute then declares: "Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service." (§209(a).)

The provisions of the Missouri statute for mandatory mediation and for recommendations by a public board, to be followed by seizure if the recommendations are not accepted, are thus wholly inconsistent with the federal Act and must yield to it.

The inference should not be left that it is only unions that oppose compulsory arbitration and other forms of government coercion as to the terms of settlement.

The Taft-Hartley provisions quoted above are in precise accord with the views of Senator Taft quoted *supra* p. 4, and the Senator was hardly a spokesman for the labor movement.

It was the General Electric Company, not the union, that sued to enjoin the Massachusetts board from proceeding with its hearing.

The New York Chamber of Commerce has very recently expressed views similar to those in this brief. In a telegram to Governor Rockefeller the Chamber declared (BNA Daily Labor Report, Feb. 5, 1963, p. A-6):

> "We wire to record our vigorous opposition to the bill to establish a commission of public concern to act in labor disputes in New York State. Our reasons are these:
>
> "The creation of a standing commission will encourage governmental intervention in labor disputes in which no real threat to public health, safety or welfare exists and which the parties should be permitted to settle for themselves.
>
> "The prospect of governmental intervention, which is inherent in the creation of a standing commission, causes both parties to conceal the full extent of their willingness to compromise. Thus the settlement which the union would be ready to accept, and which perhaps the employer might be willing to pay, stands unrevealed during the bargaining because of the tendency of mediating panels to split the difference existing at the time the panel enters the dispute. In short, it undermines free collective bargaining.
>
> • • •
>
> "The creation of a standing commission would be a long step on the road to compulsory arbitration of labor disputes. It would strike a blow at free collective bargaining. It would take us down the path to government fixation of wages and prices.
>
> • • •
>
> "Moreover, there is grave doubt whether the state may forcibly inject itself into such labor disputes involving interstate commerce in view of the preemption of this area by federal law."

CONCLUSION

For the foregoing reasons and for the reasons stated in the brief for appellants, we submit that the judgment of the Supreme Court of Missouri should be reversed.

Respectfully submitted,

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